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No. 99-1591

IN THE
Supreme Court of the United States

JOHN GOODE,
d/b/a Mr. Bones BBQ,

Petitioner,

v.

CITY OF AUSTIN, TEXAS and
FINE HOST CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMERICANS FOR THE DEFENSE OF CONSTITUTIONAL RIGHTS, INC. AS AMICUS CURIAE SUPPORTING PETITIONER

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MOTION TO FILE AMICUS CURIAE BRIEF

Pursuant to Supreme Court Rule 37(2)(b), Americans for the Defense of Constitutional Rights, Inc. (ADCR) , hereby moves for leave to file the *amicus curiae* brief bound herewith which supports the grant by this Court of the petition for a writ of certiorari in this case. Consent to filing this brief has been granted by Petitioner John Goode, but withheld by Respondents City of Austin and Fine Host Corporation.

ADCR believes that the brief bound herewith raises arguments not previously advanced in this case that may assist the Court in deciding the issues raised by Petitioner. Wherefore movant ADCR respectfully prays that this motion to file an *amicus curia* brief be granted.

This the 26th day of April, 2000,

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STATEMENT OF AMICUS INTEREST

Americans for the Defense of Constitutional Rights, Inc. (ADCR) is a non-profit corporation organized under the laws of North Carolina by the five original plaintiffs in *Shaw v. Reno*, 509 U.S. 630 (1993).[1] Because of their faith in the values of the Equal Protection Clause and their concern that racial gerrymanders and racial quotas are endangering those values and exacerbating, rather than reducing, racial divisions, these five citizens created ADCR.

Among ADCR's missions are to inform the public about some of the odious practices which currently threaten the goal of a "color blind society;" urge legislators and public officials to enact laws and issue decrees that will meet these threats; and, as a last resort, participate in litigation to eliminate procedures, methodologies, and social structures which polarize our citizens along racial lines. ADCR has filed *amicus* briefs in *Lawyer v. DOJ*, 117 S.Ct. 2186 (1997), and *Chen v. City of Houston*. ___ F. 3d ___ (5th Cir. 2000).

SUMMARY OF ARGUMENT

Petitioner John Goode, an African-America owner of a business, lost his catering contract with the city of Austin because he refused to submit to racial classification in the city's affirmative action program. Therefore, he does have standing to challenge that program, despite the fact that he is black. The assumption that Petitioner was automatically

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1. This brief was authored in whole by Robinson Everett and Seth Neyhart, counsel for Americans for the Defense of Constitutional Rights, Inc., who have no connection with or interest in petitioner or any other party. No counsel for any party assisted in preparation of this brief. In addition, no person or entity other than Americans for the Defense of Constitutional Rights, Inc. and their counsel made a monetary contribution to the preparation or submission of this brief.

benefitted by this program and therefore had no cognizable harm under the Equal Protection Clause is offensive, paternalistic, and turns the equal protection principle on its head.

Furthermore, the holding that Petitioner lacks standing to challenge an affirmative action program because he is black is inconsistent with this Court's rulings as to public contracts in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) and *The City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), as well as with its standing doctrine stated in its discussion of racial gerrymandering race based peremptory jury challenges. Petitioner's standing should be affirmed by this Court because he was personally subjected to a racial classification by a government agency which treated him unequally on account of his race.

The stigmatic harm caused by the use of racial classifications does the same damage in the field of public contracts that is done by race based criteria when used in the electoral process, *see, e.g., Shaw v. Reno,* 509 U.S. 630 (1993), or to the trial process. *See, e.g. Powers v. Ohio* 499 U.S. 400 (1991). While the question of whether his treatment was better or worse than that of whites is open to debate, it is undisputed that the city of Austin intended to treat Petitioner Goode unequally on account of his race. Therefore, he has standing under the Equal Protection Clause to challenge the City of Austin's affirmative action program.

ARGUMENT

I. PETITIONER GOODE HAS STANDING TO CHALLENGE THE CITY OF AUSTIN'S AFFIRMATIVE ACTION PROGRAM BECAUSE HE HAS PERSONALLY SUFFERED HARM BY THE USE OF ITS RACIAL CLASSIFICATION.

In a short, unpublished opinion the Fifth Circuit held that Petitioner John Goode, an African-American business owner, did not have standing to challenge the termination of his contract on racial discrimination grounds. Petitioner Goode was the owner of a barbeque restaurant (Mr. Bones Barbeque), which subcontracted under Fine Host Corporation to provide food services at city venues for the city of Austin, Texas.

After Mr. Goode refused to have his business certified as a Minority/Woman Business Enterprise. ("M/WBE"), his contract was terminated in August 1996 and Fine Host replaced him with a M/WBE certified business. The Fifth Circuit held *per curiam* that "[B]ecause the 'intentionally discriminatory race and gender conscious goals' of which Goode complains benefitted rather than injured him, we conclude that Goode lacks standing to attack their constitutionality." Appendix to Petition for Certiorari, at 4-5.

This holding offensively and paternalistically assumes that forcing John Goode to accept classification as separate and different from American citizens of other races and therefore needing special economic privileges to be able to compete with "normal" business owners benefits him, rather than injures him. This assumption stands the equal protection principle of the Fourteenth Amendment on its

head.[2]

Moreover, as Justice Scalia said in his concurring *Adarand* opinion, "under our Constitution there can be no such thing as either a creditor or a debtor race. That concept is alien to the constitution's focus upon the individual." 515 U.S. 200, 239 (1995) (Scalia J., concurring).

Petitioner Goode was ordered by Respondent Fine Host Corporation to submit to being classified by his race in order to keep his contract and stay in business. When he refused to accept the indignity of racial registration, but insisted on being treated as an individual, his contract was terminated and given to another minority business owner who would conform. Thus, Petitioner personally suffered concrete and devastating harm due to the City of Austin's policy requiring racial classifications. Therefore, he does have "such a personal stake in the outcome of the controversy

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2. As Justice Thomas put it in his concurring opinion in *Adarand Constructors, Inc. v. Pena*:

"These programs not only raise grave constitutional questions, they also undermine the moral basis of the equal protection principle. Purchased at the price of immeasurable human suffering, the equal protection principle reflects our Nation's understanding that such classifications ultimately have a destructive impact on the individual and our society . . . [T]here can be no doubt that racial paternalism and its unintended consequences can be as poisonous and pernicious as any other form of discrimination. So-called "benign' discrimination teaches many that because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternatively, provoke resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences." 515 U.S. 200, 240, 241 115 S.Ct. 2097, 2119 (1995) (Thomas J., concurring).

as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions[.]" *Baker v. Carr*, 369 U.S. 186, 204 (1962).

Adding insult to the very real injury that Petitioner Goode suffered, the courts below told him that he had no recourse for justice from the federal judiciary, because all he had to do to avoid any negative economic consequences was to certify himself as an African-American business owner. This "separate but better" approach to Equal Protection analysis assumes that no one can challenge racial classifications if an argument can be made that he or she would benefit from the classification, no matter how offensive this may be to the supposed recipient of that benefit.

Thus, the District Court below rejected the notion that its ruling "is analogous to preventing Rosa Parks from challenging the segregated seating arrangements on Birmingham's buses in the 1950s." Appendix to Petition for Certiorari, at 14. Instead, according to that court, "[T]he correct analogy is that a white bus rider on the Birmingham buses would not be able to challenge the segregated seating arrangements because he would not suffer an injury in fact sufficient to confer standing." *Id.*

According to this same faulty logic, a white person who challenged the segregated rail car system in *Plessy v. Ferguson* would also have lacked standing to bring such an action, even though on its face the Louisiana law in dispute stated that "[n]o person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to." 163 U.S. 537, 540 (1896).

This concept of standing in Equal Protection analysis is invidious and pernicious because it reinforces by law the

erroneous concept that racial classifications are a zero sum game; i.e. that there is a debtor race and creditor race, and that the defendant government helps one and hurts the other by its racial classification. The truth is, members of all races are harmed - as is society as a whole - when they are subjected to racial classifications. And Petitioner Goode, who declined to operate under this pernicious racial classification, personally suffered grievous harm from not acquiescing in the race-based system.

Beyond the obvious harm of losing his livelihood derived from selling food, Petitioner Goode was denied something even more fundamental. He was stripped of his right as an American citizen to be treated as an individual human being and not merely as a member of a particular racial class or ethnic group. He was not allowed to actually be equal. He was not treated equally under the law, and he was denied an equal opportunity to fail or succeed to that enjoyed by the rest of American society. Instead, he was told to accept his lot and take what he had coming to him because of his race - or else. This is his harm, and he has suffered it personally at the hands of the defendants.

Finally, the paternalistic assumption that Petitioner Goode was treated better by this program than a similarly situated white male is no reason for denying him standing. Even if it were true, something cannot be "better" without being unequal to something else. And under the plain wording of Fourteenth Amendment, Petitioner Goode has the right to be treated equally, not better or worse. This Court should state clearly that in interpreting the Equal Protection Clause of the Fourteenth Amendment, equal really means equal and every American has the right to be equal under the law.

II. THE EQUAL PROTECTION PRECEDENTS OF THIS COURT HAVE RECOGNIZED THE TYPE OF HARM THAT PETITIONER GOODE HAS SUFFERED IS SUFFICIENT TO CONFER STANDING.

The reasoning of the holding below is fundamentally inconsistent with the holding in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) that any person of any race has the right to demand strict scrutiny of any racial classification which subjects that person to unequal treatment. *See id.* at 223. Furthermore, it would follow from this reasoning that a person whose racial or ethnic group constituted a majority in a congressional or legislative district has no right to complain about racial gerrymandering, or that one could not complain about the exclusion of some other race from a jury, or that a member of a majority race could not complain about being precluded from marrying a member of a minority race, since the racial classification was intended to benefit the majority race to which the injured party belongs.

Thankfully, this Court has held otherwise.

A. The holding Below Is Inconsistent With This Court's Recent Decisions Concerning Government Affirmative Action Programs.

Under this Court's holdings in *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989) and *Adarand Constructors, Inc. v. Pena,* 515 U.S. 200 (1995), "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny." *Id.* at 224.

Therefore, "[to] whatever racial group these citizens belong, their "personal rights to be treated with equal dignity and respect are implicated by a rigid rule erecting race as the sole criterion in an aspect of public decisionmaking. Absent

searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *City of Richmond v. J.A. Croson Company*, 488 U.S. 469, 493 (1989). "We thus reaffirm the view expressed by the plurality in *Wygant* that the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefitted by a particular classification." *Id.* at 494. "Classifications based on race carry a danger of stigmatic harm. Unless they are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." *Id.*

This Court has thus found it necessary for federal courts to subject all affirmative action programs by any governmental agency to strict scrutiny in order to determine whether or not they are strictly reserved to remedial settings and do not in fact promote notions of racial inferiority and lead to a politics of racial hostility. If, according to this Court in *Adarand Constructors, Inc. v. Pena,* "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny," 515 U.S. at 223, the Court of Appeals obviously erred in holding that Petitioner Goode lacks standing to challenge the City of Austin's affirmative action program because he is black. By its own terms, the City of Austin's affirmative action program was trying to treat Petitioner Goode unequally because he is an African-American.

In short, Petitioner Goode was personally subjected to a racial classification. This classification treated him unequally. The lower court's holding that this "separate but

better" treatment meant that Petitioner Goode suffered no real harm ignores the Court's pronouncement that the stigmatic harm of implied racial inferiority is a real, tangible, destructive, but often inevitable result of this kind of program.[3] According to both the letter and spirit of the affirmative action precedents of this Court, then, Petitioner Goode has standing because he was personally subjected to a racial classification that treated people differently according to race.

B. The Holding Below Is Inconsistent With This Court's Standing Doctrine In Its Racial Gerrymandering Decisions Under The Equal Protection Clause Of The Fourteenth Amendment.

In ruling against Petitioner Goode, the Fifth Circuit cited this Court's decision in *United States v. Hays* for the proposition that when "a governmental actor is discriminating on the basis of race, the resulting injury accords a basis for standing only to those persons who are personally denied equal treatment by the challenged discriminatory conduct." 515 U.S. 737, 744-745 (1995). However, this Court's treatment of the heavily discussed issue of standing in the *Shaw* line of cases does not support

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3. "Even though it is not the actual predicate for this legislation, a statute of this kind inevitably is perceived by many as resting on an assumption that those who are granted this special preference are less qualified in some respect that is identified purely by their race. Because that perception - especially when fostered by the Congress of the United States - can only exacerbate rather than reduce racial prejudice it will delay the time when race will become a truly irrelevant, or at least insignificant, factor ... Although [the legislation at issue] stigmatizes the disadvantaged class with the unproven charge of past racial discrimination, it actually imposes a greater stigma on its supposed beneficiaries." *Adarand Constructors Inc. v. Pena*, 515 U.S. at 229.

the validity of the Fifth Circuit's holding, but instead seriously undercuts it. In *Hays*, the race of the plaintiffs was immaterial to their standing to challenge a racial gerrymander. Instead, all registered voters of any race have standing under *Hays* to challenge a racial gerrymander to which they been personally subjected, either by being placed inside the suspect district or by having been in some other way personally subjected to a racial classification. *See id.* at 745.

Indeed, the Court, over dissent, has consistently refused to factor in the race of the plaintiffs when determining their standing to challenge racial gerrymanders ever since *Shaw v. Reno*, 509 U.S. 630 (1993), was decided. There, the Court said about the Equal Protection Clause, "Its central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race." *Id.* at 642. "Even in the pursuit of remedial objectives, an explicit policy of assignment by race may serve to stimulate our society's latent race consciousness, suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs. *Id.* at 648. "They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility. *Id.* at 643. "If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury. *Id.* at 648.[4]

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4. In replying to Justice Souter's dissent, the Court's opinion explained further the stigmatic and representational harms that racial gerrymanders cause. "Justice Souter apparently believes that racial gerrymandering is harmless unless it dilutes a racial group's voting strength. As we have explained however, reapportionment legislation that cannot be understood as anything other than an effort to classify and separate voters by race injures voters in other ways. It reinforces racial

Thus, apart from issues of vote dilution, *Shaw* recognized "the analytically distinct claim that a reapportionment plan rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification." *Id.* at 652.

This "analytically distinct" Equal Protection claim of *Shaw* is thus not based on a theory of group racial rights or voting strength, but is perhaps best understood as the right *not* to be classified by race. "[T]he essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts." *Miller v. Johnson,* 515 U.S. 900, 911 (1995). "[S]o did we recognize in *Shaw* that it (the State) may not separate its citizens into different voting districts on the basis of race. The idea is a simple one: At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Id.* (citations omitted). "Where a plaintiff resides in a racially gerrymandered district, the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action." *Bush v. Vera*, 517 U.S. 952, 958 (1996).

Thus, under the *Hays* doctrine, "where a plaintiff resides in a racially gerrymandered district, however, the plaintiff has been denied equal treatment because of the

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stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole. Justice Souter does not adequately explain why these harms are not cognizable under the Fourteenth Amendment. *Id.* at 650.

legislature's action." *U.S. v. Hays*, 517 U.S. 737, 745 (1995). "Voters in such districts may suffer the special representational harms racial classifications can cause in the voting context." *Id.* "On the other hand, where a plaintiff does not live in such a district, he or she does not suffer those special harms, and any inference that the plaintiff has personally been subjected to a racial classification would not be justified absent specific evidence tending to support that inference." *Id.* "Unless such evidence is present, that plaintiff would be asserting only a generalized grievance against governmental conduct of which he or she does not approve." *Id.* In *Hays*, the racially diverse group of plaintiffs did "not live in the district that is the primary focus of their racial gerrymandering claim, and they have not otherwise demonstrated that they, personally, have been subjected to a racial classification. For that reason, we conclude that appellees lack standing to bring this lawsuit." *Id.* at 759.[5]

This Court's standing doctrine in *Shaw* and *Hays* - a line of cases parallel to its affirmative action cases - cannot be understood without viewing it as a recognition that the Equal Protection Clause guarantees all Americans of all races the right to not be subjected to classification by race for the purposes of government action. Such racial classifications, as this Court has frequently stated, "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)).

Thus, the mere fact that a registered voter in a district has been personally subjected to a racial classification for the

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5. No condition is stated in *Hays* that the plaintiff not only must live in the district but also must belong to the minority race in the racially gerrymandered district.

purposes of the government redistricting action is enough to establish standing to challenge a racial gerrymander. It does not matter what race the citizen belongs to or what effect the gerrymander has on that citizen's ability to elect representatives of his or her choice. The harm that confers standing is the classification itself, and the inevitable stigma and racial divisions and turmoil that are inevitably attached.

In the case at bar, an affirmative action case, a member of the supposedly benefitted group was forced by the city of Austin and its contractor to stay in his racial pigeonhole on pain and penalty of losing his contract. Just as in the racial gerrymandering cases, Petitioner Goode's particular race ought not to be the dispositive factor as to his standing, but rather his personal subjection to a governmental racial classification that treats Americans differently on account of their race.

C. The Holding Below Is Inconsistent With This Court's Precedents Forbidding Race-Based Peremptory Jury Challenges.

In a similar vein, this Court's precedents as to peremptory challenges are at odds with the holding below. In particular, this Court has held that a criminal defendant "does have the right to be tried by a jury whose members are selected by nondiscriminatory criteria." *Powers v. Ohio*, 499 U.S. 400, 402 (1991). Thus, the Court extended the holding of *Batson v. Kentucky*, 476 U.S. 79 (1986), which stated that a defendant could raise an Equal Protection challenge to the use of peremptories at his own trial by showing that the prosecutor used them to exclude members of the defendant's race.

The *Powers* Court rejected the state's contention that "in equal protection analysis the race of the objecting defendant constitutes a relevant precondition for a *Batson*

challenge." 499 U.S. at 406. In criticizing this argument, the Court states that "this limitation on a defendant's right to object conforms neither with our accepted rules of standing to raise a constitutional claim nor with the substantive guarantees of the Equal Protection Clause and the policies underlying federal statutory law." *Id.*

In *Powers,* the Court rejected the view that "race based peremptory challenges survive equal protection scrutiny because members of all races are subject to like treatment, which is to say that white jurors are subject to the same risk of peremptory challenges based on race as are all other jurors." *Id.* at 410. Instead, the Court stated "[i]t is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree." *Id.* (citing *Loving v. Virginia*, 388 U.S. 1 (1967).

Similarly, in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994), the court ruled that *Batson* extended to gender-based peremptory challenges. "All persons, when granted the opportunity to serve on a jury, have the right not to be excluded summarily because of discriminatory and stereotypical presumptions that reflect and reinforce patterns of historical discrimination." *Id.*

Although the jury exclusion cases present unique issues which arise from the nature of the peremptory challenge and the assertion of the stricken juror's right by a third party, the underlying principle of *Powers* is relevant to this case. *Powers* takes a blanket approach to all racial classifications. Equal Protection analysis therefore does not hinge upon how the races are lined up in a particular case, but rather upon the existence of a governmental racial classification to which the complaining party has been subjected. Thus, the defendant has "the right to be tried by a jury whose members are selected by nondiscriminatory criteria," regardless of the respective races of the defendant

and the stricken jurors. *Powers*, 499 U.S., at 404.

Similarly, standing in affirmative action cases should not hinge on which race is supposedly benefitted or which race is supposedly burdened. As long as the plaintiff has been personally subjected to a racial classification for the purposes of government action, he or she has standing to challenge it and subject it to a strict scrutiny analysis.

D. The holding below is inconsistent with the Court's decision in *Loving v. Virginia.*

In *Loving v. Virginia,* 388 U.S. 1 (1967), this Court held that preventing marriages between persons solely on the basis of racial classifications violated the Equal Protection Clause of the Fourteenth Amendment. 388 U.S. 1 (1967). In its discussion of the Virginia statutory scheme prohibiting interracial marriages, the Court noted that "[t]he fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy." *Id.* at 11.

In *Loving v. Virginia,* Mr. Loving was white and Mrs. Loving was African-American. If, as this Court noted, the purpose of the miscegenation statute in Virginia was to protect the purity and superiority of the white race against all others, then under the rationale of the decision below it would follow that only Mrs. Loving would have standing to sue and not Mr. Loving - whose race was supposedly benefitted by the law!

This, of course, was not the case. Both Mr. Loving and his wife were parties to the lawsuit and their standing was not in issue. *See Id.* at 1. Instead, the Court in *Loving* went to the merits of the case and held that "the Equal Protection Clause requires the consideration of whether the (racial) classifications drawn by any statute constitute an

arbitrary and invidious discrimination." *Id.* at 10.

In *Loving* the Court struck down Virginia's miscegenation statute as repugnant to the Fourteenth Amendment, and did so on the basis of a broad rationale. The court noted that "even assuming an even-handed state purpose to protect the 'integrity' of all races," the miscegenation statute of Virginia would be unconstitutional. *Id.* at 11 n.11. Thus, the Court held that "restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." *Id.* at 12.

In *Loving,* as in all the Equal Protection precedents discussed above, the fact of the racial classification for the purposes of a government action was the essence of the constitutional wrong. The question of standing was not raised in *Loving* presumably because in this context it was obvious that both members of the interracial couple were seriously harmed by the challenged governmental classification.

On the other hand, the rationale employed by the Circuit Court for denying standing to Petitioner Goode would have denied standing to Mr. Loving but granted it to Mrs. Loving, since the statute in question was designed to protect the white race, just as the District Court below observed about the segregation laws applicable to Mrs. Parks. This ludicrous scenario demonstrates the inherent problems of trying to base Equal Protection analysis on a determination of whose racial ox is being gored. The true repugnance of the Virginia miscegenation statute to the Fourteenth Amendment, as this Court recognized in *Loving v. Virginia,* is the use of the racial classification itself.

CONCLUSION:

For the above stated reasons, this Court should grant appellant John Goode's petition for a writ of *certiorari* and reverse the holding below that he lacks standing to challenge the affirmative action program because he is black.

Respectfully submitted this 27th day of April, 2000.

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